THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.16589 OF 2007

DATED: 06-08-2007

Between :

S. Krishna Murthy … Petitioner

And

1. The Joint Collector, Krishna at Machilipatnam., and another. .. Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.16589 OF 2007

ORDER :

The petitioner is a kerosene hawker holding licence under the provisions of the A..P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980 (for short, 'the Control Order').

This writ petition is filed aggrieved by the order of the 1st respondent – Joint Collector dated 24-7-2007 under which the petitioner's licence was suspended pending further enquiry on the ground of alleged contravention of the conditions of the licence.

A perusal of the impugned order shows that the business premises of the petitioner was inspected by Special Deputy Tahsildar (PDS), Tiruvuru on 31-5-2007 and on verification of the Stock and Sales Registers it was found that the petitioner was selling the kerosene at higher rates and was also indulging in diversion of Kerosene into black-market. On the basis of the inspection submitted by the Special Deputy Tahsildar, the Revenue Divisional Officer, Nuzivid submitted a report dated 2-7-2007 to the 1st respondent – Licensing Authority pursuant to which the 1st respondent while initiating action under Clause-28 (1) of the Control Order, suspended the licence pending further enquiry. The said order dated 24-7-2007 is under challenge in this writ petition.

It is contended by the learned Counsel for the petitioner that all the allegations made against the petitioner are false and without any basis and at any rate the impugned action of the 1st respondent in suspending the licence without issuing any show-cause notice is

arbitrary and illegal apart from being violative of the principles of natural justice.

The learned Counsel for the petitioner in support of the above contention placed reliance upon the decision of the Division Bench in A. SRIRAMA MURTHY vs. JOINT COLLECTOR, VISAKHAPATNAM & ORS.[1]

On a careful consideration of the entire material on record, I do not find substance in any of the contentions raised by the petitioner.

Clause-28 of the Control Order may be extracted hereunder :

> *"**28. Contravention of conditions of licence Regulation Certificate/Supply Card/Provisions of this Order:-** (1) No holder of a licence or registration certificate or supply card issued under this order or his agent or servant or any other person acting on his behalf shall contravene, attempt or abet the contravention of any of the provisions of this order or any of the conditions of the licence, registration certificate or any direction issued thereunder. If any such holder or his agent or the servant or any person acting on his behalf contravene any of the said terms or conditions, his licence or registration certificate or supply card may be cancelled or suspended for such period as may be specified by an order in writing by the licensing authority.*
>
> *Provided that no order shall be made under this clause unless the licensee or the holder of registration certificate has been given a reasonable opportunity for representing his case in writing and also having heard in person against the proposed cancellation.*
>
> *(2) Pending action as in sub-clause (1), above, the licensing authority for reasons to be recorded in writing, order an interim suspension of the licence, registration certificate or supply card."*

A perusal of sub-clause (1) of Clause-28 shows that the licensing authority is competent to cancel the licence or to suspend the same for a specified period where the licensee has acted in contravention of the terms or conditions of the licence. However, the proviso to Clause-28 (1) made it clear that such order of cancellation or suspension shall not be made unless the licensee has been given a reasonable opportunity for representing his case.

Under sub-clause (2) of Clause-28 the licensing authority is also competent to order interim suspension of the licence pending action under sub-clause (1) of Clause-28. Thus, it is clear that what has been contemplated under Clause 28(1) is cancellation or suspension as a measure of punishment. It is a final order which requires to be passed after giving an opportunity to the licensee for representing his case. However, the suspension of licence provided under Clause-28 (2) is only as an interim measure pending action under Clause-28 (1). Such power can be exercised by the licensing authority for reasons to be recorded in writing in public interest.

The law is well-settled that prior notice is not mandatory where the licence is suspended as an inerim measure pending enquiry into the alleged irregularities against the licensee and the same is also clear from the language of sub-clause (2) of Clause-28.

The ratio laid down by the Division Bench in A. SRIRAMA MURTHY'S case (1 supra) that the power of interim suspension under sub-clause (2) of Clause-28 cannot be invoked unless action has been initiated and pending under Clause-28 (1) is not of any assistance to the contention of the petitioner that the impugned order is bad for want of prior notice.

In the case on hand, the impugned order itself makes it clear that the action under Clause-28(1) has been initiated against the petitioner and pending such action the petitioner's licence has been suspended since the 1st respondent found that the continuance of the petitioner as hawker pending enquiry is detrimental to the Public Distribution System.

The said order does not suffer from any infirmity warranting interference by this Court.

Accordingly, the Writ Petition is dismissed. No costs.

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G. ROHINI, J.

Dt.06-8-2007

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[1] 1998 (2) APLJ 450 (HC)